vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2098 OF 1992

M/s.Walchandnagar Industries Ltd. ... Petitioners

V/s.

Surekha Sitaram Pophale & Anr. ... Respondents

a/w

WRIT PETITION NO.2111 OF 1992

M/s.Walchandnagar Industries Ltd. ... Petitioners

V/s.

B. M. Madake & Anr. ... Respondents

a/w

WRIT PETITION NO.3227 OF 1992

M/s.Walchandnagar Industries Ltd. ... Petitioners

V/s.

Sumedha Vishnu Lihine & Anr. ... Respondents

and

WRIT PETITION NO.3226 OF 1992

M/s.Walchandnagar Industries Ltd. ... Petitioners

V/s.

Lalita Vilas Bille & Anr. ... Respondents

Mr.L.M. Nerlekar for Petitioners
Mr.Dilip Bodake for Respondent No.1 in all petitions
Mr.N.P. Deshpande, AGP, for Respondent No.2 in all petitions

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 26, 2007**

ORAL JUDGMENT:

. The Petitioners in all these petitions run a

school mainly for the children of their employees. It appears that the workforce in the petitioners' factory reduced as a result of which the number of students in the school declined. The petitioners were, therefore, compelled to reduce classes in the primary section. The Petitioners consequently applied to the Education Officer on 20.6.1987 under Rule 26 of the MEPS Rules for permission to retrench 10 permanent teachers. Certain queries were raised by the Education Officer in his letter of 8.12.1987. The Petitioners answered these queries and submitted various documents including the seniority list of the employees who would be affected by the retrenchment. The petitioners had also sought permission to retain two junior teachers, one of whom, Smt.P.P. Patki, was a widow. The petitioners considered it their social obligation to retain her in service because of exceptional circumstances. As regards the other teacher, Shri A.R. Shah, who was junior to the 10 permanent teachers who were to be retrenched, the petitioners pointed out that they wished to implement the policy of the Government to keep the family together; the wife of this employee was working in Walchandnagar. The proposal of the petitioners to retain the junior employees was accepted by the Education Officer only qua Smt.P.P. Patki. The Education Officer did not permit the Petitioners to retain Shri Shah. The Education Officer by his

communication of 30.5.1988 granted permission for retrenching the 10 employees, including Shri Shah.

2. Accordingly, the petitioner gave notice to the affected teachers on 10.6.1988 that they proposed to retrench them w.e.f. 15.9.1988. The teachers were also informed that they did not need to report for work as there was no work available and that they would be deemed to be present and their salaries would be paid accordingly.

3. A week later, the Education Officer by his letter of 17.6.1988 called upon the petitioners to permit the teachers affected to sign the muster rolls and further directed them to furnish a seniority list. The Petitioners complied with these directions on 11.7.1988. On 15.9.1988, the retrenchment came into effect. The services of the 10 teachers were terminated on account of retrenchment. The aggrieved teachers filed appeals before the School Tribunal, seeking reinstatement with full backwages.

4. The School Tribunal has accepted the contention of the teachers that their services had been wrongly terminated, in violation of the provisions of Rule 26 of the Rules framed under the MEPS Act. The teachers were therefore, granted reinstatement with continuity of

service and full backwages. Aggrieved by the decision of the School Tribunal the petitioners filed writ petitions against 7 employees. Three of these petitions have already been disposed of in view of the undertakings given by those teachers. The teachers in those petitions had agreed to accept reemployment and not claim any backwages. According to Mr.Nerlekar, appearing for the petitioners, the four teachers involved in these petitions had also furnished similar undertakings but the petitioners are unable to find those undertakings and, therefore, these petitions were heard on merits.

5. The Education Officer was requested to accord approval for retrenching staff since the students' strength in the primary section was reduced. The petitioners had therefore, applied by their letter dated 20.6.1987 which is on record. The queries raised by the Education Officer through his letter of 8.12.1987 have been answered by the petitioners on 22.2.1988. Each of the queries have been satisfactorily answered by the petitioners. The petitioners provided the information regarding the number of teachers, students and divisions in the primary section of their schools. The petitioners also furnished the seniority list of the primary section in their four schools for the year 1987-1988. Admittedly, the respondent teachers in these

petitions were the juniormost barring Shah and Patki. Thus Shah also came to be terminated on account of retrenchment. Patki continued in view of the exceptional circumstances made out by the petitioners. The Education Officer granted approval to the petitioners on 30.5.1988 for retrenchment. Admittedly, the Petitioners' school was not entitled to grant in aid at the time of retrenchment. Once this permission was communicated to the Petitioners, they informed the affected teachers on 10.6.1988. that their services would be terminated w.e.f. 15.9.1988. This was in consonance with the MEPS Act and the Rules framed thereunder as three months' notice is required to be given to the teachers who are to be retrenched.

6. Thus, in my view, the petitioners have complied with Rule 26 completely and the Tribunal has erred in concluding that the retrenchment was bad. The Tribunal has erroneously held that the Education Officer has not accorded approval to the retrenchment. The letter of the Education Officer dated 17.6.1988 calls upon the petitioners to permit the 10 teachers whose services were retrenched to sign the muster roll and to allow them to work as usual. The Education Officer again directed the Petitioners to furnish the seniority list of all the teachers of all the schools of the Institution as also a list of the teachers proposed to

be retrenched. The petitioners, furnished the required particulars to the Education Officer and also permitted the retrenched employees to sign the muster rolls till the order of termination of their services came into effect. The Education Officer has not revoked the permission granted on 30.5.1988 for retrenching the 10 employees. Thus, there is no question of concluding that the retrenchment is bad since it had been approved. The Education Officer has granted approval only because Rule 26 had been complied by the Petitioners. The Tribunal has held that the Education Officer had not granted permission to retrench the employees and that the petitioners had effected the retrenchment without such permission. This finding is manifestly incorrect and cannot be accepted.

6. The petitions are, therefore, allowed. The order of the Tribunal in each petition is set aside. Rule made absolute accordingly.

7. Mr.Nerlekar points out that three of the employees i.e, the respondents in Writ Petition Nos.2098 of 1992 and 3227 of 1992 are employed by them despite obtaining a stay of the Tribunal’s order. They have been employed from 1.12.1999 and 10.9.1999 respectively. The Respondent in Writ Petition No.3226 of 1992 was also employed on 29.11.1998. However, it appears that she

worked only for a certain period of time and not thereafter. The respondent in Writ Petition No.2111 of 1992 did not join the services with the petitioners despite their offer, as she had secured employment in an aided school at Baramati.

8. In the interest of justice, although the petitions are allowed and the order of the School Tribunal in each petition is set aside, the services of the teachers in Writ Petition Nos.2098 of 1992, 3227 of 1992 and 3226 of 1992 shall be continued by the petitioners. However, these employees will not be entitled to any wages for the period from 1988 till the dates when they were taken back in service. The petitioners shall treat Respondent teacher in each of these petitions in continuous service from the date of his/her initial appointments i.e., Respondent No.1 in W.P. No.2098 of 1992 from 28.10.1979, Respondent No.1 in W.P. No.2111 of 1992 from 14.1.1977, Respondent No.1 in W.P. No.3227 of 1992 from 25.7.1978 and Respondent No.1 in W.P. No.3226 of 1992 from 28.7.1977, for the purposes of payment of retiral dues.

9. Writ Petitions are disposed of accordingly.